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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,145	04/08/2004	John Faragher	14966.0003	6654

7590 12/16/2005

STEPTOE & JOHNSON LLP
Attn: Docket Administrator - Box USPTO
1330 Connecticut Avenue, NW
Washington, DC 20036

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/820,145	Applicant(s) FARAGHER ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 14-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-9-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicant's election of Group I in the reply filed on November 18, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 6 & 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruttan (5,196,344).

Ruttan discloses a tablet for preservation of milk that contains natamycin, sodium chloride as a filler and carbowax as a granulating agent (col. 3, lines 13-16). The claims appear to differ from Ruttan in the suggestion of the use of physiologically acceptable ingredients. But natamycin is only permitted for use as a food additive for treating the surface of cheese products in the United States (21 CFR 172.155). In the event of a change in the rules that restricts the use of natamycin in foods, it would have obvious to eliminate the non-physiologically acceptable

ingredients from the tablet of Ruttan so that the tablet could be used in foods.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Ruttan.

Barry discloses that FDA rules were altered to approve the use of powdered natamycin combined with powdered cellulose in grated and shredded cheese manufacturing. The claims appear to differ from Berry in the formulation of the composition into a tablet. Ruttan teaches that natamycin mixtures are easily tableted. It would have been obvious to form a tablet of natamycin for the Berry use in cheese manufacture. It is very well known in the art that microingredient doses must be carefully measured. It would have been obvious to formulate and sell a concentrated amount of natamycin for dilution and use in cheese processing in order to improve the speed and accuracy of weighing natamycin in a cheese process.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ang (EP 1,157,618).

Ang discloses an anti-caking, anti-mycotic food ingredient. The selected anti-caking materials are shown at page 2, paragraphs 3 and 18.

The anti-mycotic materials are shown in paragraph 4 and 23 to include natamycin. The combination is applied to cheese in aqueous and also powdered form. Examples show the various ingredients of the claims. The claims appear to differ from Ang in the recitation of the use of a tablet. But to sell a food additive composition in a tablet form would have been an obvious way to provide a fixed amount of ingredient for a given amount of liquid. It is appreciated that the use of a buffer is not mentioned in Ang but buffers, such as citrate and phosphate, are well known to assist in controlling the pH of liquids. It would have been obvious to use citrate or phosphate buffers to control the pH of the aqueous solution of natamycin to a pH of between 4 and 7. To modify the composition of Ang so that it has a lot of anti-caking ingredients would have been an obvious way to maximize the disintegration rate of the tablet. It is appreciated that a tablet is not mentioned but to press the formulation of Ang into a tablet would have been an obvious way to dispense controlled amounts of natamycin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 12-5-05
PRIMARY EXAMINER 1761